

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CALLAWAY GOLF COMPANY,

Plaintiff,

C. A. No. 06-91 (SLR)

v.

ACUSHNET COMPANY,

Defendant.

**REDACTED**

**DECLARATION OF RICHARD M. KLEIN IN SUPPORT OF  
PLAINTIFF CALLAWAY GOLF COMPANY'S OPPOSITION TO ACUSHNET'S  
MOTION TO**

**(i) PARTIALLY VACATE THE COURT'S NOVEMBER 20, 2007 DECISION  
and  
(ii) DISMISS CALLAWAY'S CLAIM OF BREACH OF CONTRACT (COUNT V)**

I, Richard M. Klein, declare as follows:

1. I am a partner of Fay Sharpe LLP. I am a member of the Bars for the State of Ohio; U.S. District Court for the Northern District of Ohio; U.S. Court of Appeals for the Federal Circuit; U.S. Court of Appeals for the Sixth Circuit; and the U.S. Supreme Court. I have personal knowledge of the matters stated in this declaration and would testify to them under oath if called upon to do so.

2. I was outside counsel for Spalding & EvenFlo Companies ("Spalding") involving several legal matters, including the matters that were resolved between Spalding and Acushnet Company ("Acushnet") by the 1996 Settlement Agreement referred to in the above entitled opposition. The cases resolved by the 1996 Settlement Agreement were:

- A declaratory relief case brought by Spalding in the Northern District of Ohio seeking a declaration that advertisements made by Spalding were not actionably false, disparaging, or unfair and that advertisements made by Acushnet were actionably false, disparaging, or unfair;

**REDACTED**

- Two patent infringement cases brought by Spalding in the Northern District of Ohio concerning two of its golf ball patents;
- Acushnet brought its own claim in the District of Massachusetts seeking declaratory relief against the two golf ball patents asserted by Spalding and also brought an action in the District of Massachusetts asserting false advertising and breach of contract by Spalding;
- Acushnet also filed an opposition to Spalding Trademark Application Serial No. 74/513,523 at the United States Patent and Trademark Office;
- Acushnet's claims were transferred to the Northern District of Ohio and then all of the cases were collectively transferred to the District of Delaware.

3. On June 3, 1996, the District Court of Delaware issued an order calling for the parties to participate in a settlement/mediation conference regarding the parties' pending matters before the Court.

4. Subject to a June 3, 1996 Order, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

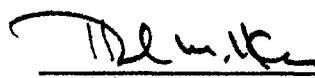
[REDACTED]

[REDACTED]

5. The 1996 Settlement Agreement (section 19) and the stipulations of the dismissals that the parties filed with the Court specifically retained the jurisdiction of the District of Delaware to resolve any disputes arising out of the Agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 day of August, 2008 at Cleve, Ohio.

  
\_\_\_\_\_  
Richard M. Klein

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2008, the attached document was electronically filed with the Clerk of Court using CM/ECF which will send electronic notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I hereby certify that on August 28, 2008, I have Electronically Mailed the document to the following person(s):

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*/s/ Thomas L. Halkowski*  
Thomas L. Halkowski